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June 28, 2000

REPORT TO THE HONORABLE MAYOR
AND CITY COUNCIL

*CITY OF SAN DIEGO V. CAROL BROWNER AND
U.S. ENVIRONMENTAL PROTECTION AGENCY,
U.S. DISTRICT COURT NO. CV-00436-E (RMB)
(LITIGATION TO CLARIFY WAIVER STANDARDS)*

On February 1, 2000, the Mayor and City Council authorized the City Attorney and City Manager to pursue all avenues of relief to clarify what standards are to be imposed on the City's reapplication of its 301(h) waiver of secondary sewage treatment standards. Such a clarification is necessary because the Environmental Protection Agency in a February 17, 2000, letter to the Mayor asserted that the threshold requirements of the Ocean Pollution Reduction Act of 1994 [OPRA] applied to all reapplications, and the City asserts that its reapplication should be evaluated under the standard 301(h) regulations just like all other applicant cities.

On March 2, 2000, the City Attorney filed a complaint in U.S. District Court against the EPA seeking a judicial declaration of the appropriate standards. On May 1, 2000, the EPA responded with a motion to dismiss the City's complaint on a variety of legal theories.

On June 19, 2000, The Honorable Rudi M. Brewster, Senior U.S. District Court Judge, heard arguments on the EPA's motion to dismiss the case and the City's motion for a preliminary injunction to extend the waiver deadline. I am very pleased to report that, after extensive argument, Judge Brewster denied all EPA challenges to his jurisdiction and the timing of the relief and granted the City's request for a preliminary injunction to extend the waiver deadline to ninety days beyond *all* final judicial action.

To resolve the underlying issue of whether OPRA or 301(h) regulations apply to the City's waiver reapplication, the Court set a July 25, 2000 trial, with the parties to pre-brief the issue of what live testimony is relevant to statutory interpretation. As in the past, the City's legal team

consisted of Ted Bromfield, Deputy City Attorney, and James Dragna, Special Counsel, with the strong support of Dave Schlesinger and the Metropolitan Wastewater Department.

Respectfully submitted,

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CASEY GWINN
City Attorney

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